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No. 94-1307

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1994

SHONG-CHING TONG,
Petitioner

v.

FIRST INTERSTATE SERVICES COMPANY,
WEBB EDWARDS, WILLIAM MURIN,
Respondents

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PETITIONER'S REPLY BRIEF

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In Respondents' Brief, there are several statements which are not true as stated. In order for the Court to review the facts, Petitioner hereby submits the United States Postal Services' customer Receipts, dated 09/08/94 and 01/17/95, as

proofs that Petitioner's Ninth Circuit Petition for Rehearing and this Court's Petition for Writ of Certiorari were timely filed.

I. Petitioner's Ninth Circuit Petition for Rehearing was timely filed.

FRAP 25 (a) provides that:

" . . . . Filing may be accomplished by mail addressed to the clerk, but filing shall not be timely unless the papers are received by the clerk within the time fixed for filing, except that briefs and appendices shall be deemed filed on the date of mailing if the most expeditious form of delivery by mail, excepting special delivery, is utilized."

FRAP, Rule 40 provides that:

"A Petition for Rehearing may be filed within fourteen (14) days

after judgment."

As Appendix A depicts, the "Memorandum" issued by the United States Court of Appeal for the Ninth Circuit was filed on August 25, 1994.

As Appendix D depicts, the "Petition for Rehearing" filed with the Clerk's Office of the United States Court of Appeal for the Ninth Circuit was mailed on September 8, 1994, which was well within the time as FRAP, Rule 40 specified.

II. Petitioner's Petition for Writ of Certiorari was timely filed.

Rules of the Supreme Court, Rule 29.2 provides that:

> ".2. To be timely filed, a document must actually be received by the Clerk within the the time specified for filing; or be sent to the Clerk by first-class mail, postage prepaid,

and bear a postmark showing that the document was mailed on or before the last day for filing; . . . ."

As Appendix B depicts, the Order of the United States Court of Appeal for the Ninth Circuit summarily denied Petitioner's Petition for Rehearing was filed on October 19, 1994 and the Petition for Rehearing was not denied because it was filed untimely.

As Appendix E depicts, Petitioner's "Petition for Writ of Certiorari" was mailed on January 17, 1995, which was the last date to file the Petition.

III. Petition for Writ of Certiorari should be granted, because there are special and important reasons.

Rules of the Supreme Court, Rule 10.1. provides that:

". . . . A Petition for a writ of certiorari will be granted only when

there are special and important reasons therefor."

"(c) When a state court or a United States court of appeals has decided an important question of federal law which has not been, but should be, settled by this court, . . ."

As the portions of the Reporter's Transcript re the hearing on Respondents' Motion for Summary Judgment held on April 6, 1994 depicts, the District Court was very reluctant to grant Respondents' Motion for Summary Judgment because the district court thought that Petitioner had inadvertently dismissed a state court's action with prejudice while:

(1) petitioner was ill seriously;

(2) The EEOC's investigation was pending;

(3) There were new facts and evidence had discovered after the filing of the state

court's action; and

(4) There were new facts and evidence had never alleged and presented in the state court's action.

CONCLUSION

The Petition for Writ of Certiorari should be granted, because the Doctrine of Res Judicata was not applicable in the instant case when facts and evidence presented supporting petitioner's assertions that there were new facts and evidence, which were precluded the barring of petitioner's claims on the basis of Collaterial Estoppel.

Dated: March 10, 1995

Shong-Ching Tong
Petitioner Pro se

U.S. POSTAL SERVICE

INDUSTRY P+DC
UNIT FIN 050108
ZIP CODE 91715-9998
DONALD # 10
09-08-94 14:27:02
VERSION 22.00

CUSTOMER RECEIPT

109 POST VAL IMP	2.90
109 POST VAL IMP	1.44
090 POSTAGE STAMPS	10.44
090 POSTAGE STAMPS	4.60
TOTAL	19.38
CASH T	20.00
CHANGE	.62

THANK YOU

Z 066 630 518

Receipt for Certified Mail

No Insurance Coverage Provided
Do not use for International Mail
(See Reverse)

Sent to: office of the clerk	
Street and No.: U.S. Supreme Court 1 First St., N.E.	
P.O., State and ZIP Code: Washington D.C. 20543	
Postage	$ 8.00
Certified Fee	1.10
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	
Return Receipt Showing to Whom, Date, and Address	
TOTAL Postage & Fees	$ 9.10
Postmark or Date	

LOS ANGELES, CA FEDERAL STA. JAN 17 1995 USPS

PS Form 3800, March 1993